

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 44383
BLUE WATER FALL INC. dba Shop-N-Go
RN102465028
Docket No. 2014-0546-PST-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

519 East Veterans Memorial Boulevard, Harker Heights, Bell County

Type of Operation:

underground storage tank ("UST") system and a convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$5,007.53 (2012-1241-PST-E; referred to the AG)
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: December 4, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$54,000

Deferred for Financial Inability to Pay: \$52,800

Total Paid to General Revenue: \$1,200

Total Due to General Revenue: \$0

Compliance History Classifications:

Person/CN – SATISFACTORY
Site/RN – SATISFACTORY

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: February 5, 2014
Date(s) of NOE(s): March 19, 2014

Violation Information

Failed to provide proper corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d); 30 TEX. ADMIN. CODE § 334.49(a)(1); and TCEQ Agreed Order, Docket Number 2012-1241-PST-E, Ordering Provision No. 2.a.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

N/A – Respondent no longer operates the facility.

Litigation Information

Date Petition(s) Filed: June 20, 2014; June 26, 2014; July 16, 2014
Date Answer Filed: August 15, 2014
SOAH Referral Date: September 29, 2014
Hearing Date(s):
Preliminary Hearing: November 13, 2014 (waived)
Evidentiary Hearing: March 31, 2015 (continued); November 12, 2015 (scheduled)
Settlement Date: November 4, 2015

Contact Information

TCEQ Attorneys: David A. Terry, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Keith Frank, Enforcement Division, (512) 239-1203
TCEQ Regional Contact: Jason Ybarra, Houston Regional Office (713) 767-3500
Respondent Contact: Sultan Prasla, President, BLUE WATER FALL INC., 4201 Monterey Oaks Boulevard, Apt. 1316, Austin, Texas 78746
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	24-Mar-2014	Screening	7-Apr-2014	EPA Due	
	PCW	14-Apr-2014				

RESPONDENT/FACILITY INFORMATION	
Respondent	BLUE WATER FALL INC. dba Shop-N-Go
Reg. Ent. Ref. No.	RN102465028
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	44383	No. of Violations	1
Docket No.	2014-0546-PST-E	Order Type	Findings
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$45,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1	
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
Compliance History	20.0% Enhancement Subtotals 2, 3, & 7 \$9,000

Notes: Enhancement for one agreed order with a denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$639	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$6,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$54,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$54,000

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$54,000
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$54,000
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Screening Date 7-Apr-2014

Docket No. 2014-0546-PST-E

PCW

Respondent BLUE WATER FALL INC. dba Shop-N-Go

Policy Revision 3 (September 2011)

Case ID No. 44383

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102465028

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Satisfactory

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one agreed order with a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 20%

Screening Date 7-Apr-2014 **Docket No.** 2014-0546-PST-E **PCW**
Respondent BLUE WATER FALL INC. dba Shop-N-Go *Policy Revision 3 (September 2011)*
Case ID No. 44383 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN102465028
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s) TCEQ Agreed Order Docket No.2012-1241-PST-E, Ordering Provision No. 2.a. and 30 Tex. Admin. Code § 334.49(a)(1) and Tex. Water Code § 26.3475(d)

Violation Description Failed to provide proper corrosion protection for the underground storage tank ("UST") system.

Base Penalty \$25,000

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				15.0%
	Potential	x			

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0.0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 12 365 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$45,000

Twelve monthly events are recommended from the April 7, 2013 order effective date to the April 7, 2014 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$45,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$639

Violation Final Penalty Total \$54,000

This violation Final Assessed Penalty (adjusted for limits) \$54,000

Economic Benefit Worksheet

Respondent BLUE WATER FALL INC. dba Shop-N-Go
Case ID No. 44383
Reg. Ent. Reference No. RN102465028
Media Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment	\$6,000	7-Apr-2013	14-Oct-2014	1.52	\$30	\$608	\$639
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install a corrosion protection system and test the system. The date required is the order effective date, and the final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$6,000

TOTAL \$639

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN603500810, RN102465028, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603500810, BLUE WATER FALL INC. **Classification:** SATISFACTORY **Rating:** 45.00

Regulated Entity: RN102465028, Shop-N-Go **Classification:** SATISFACTORY **Rating:** 45.00

Complexity Points: 3 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 519 E Veterans Memorial Blvd., Harker Heights, TX 76548-7220, BELL COUNTY

TCEQ Region: REGION 09 - WACO

ID Number(s): **PETROLEUM STORAGE TANK REGISTRATION** REGISTRATION 45182

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: April 14, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 14, 2009 to April 14, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Mike Pace **Phone:** (817) 588-5933

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 04/07/2013 ADMINORDER 2012-1241-PST-E (1660 Order-Agreed Order With Denial)**
 - Classification:** Moderate
 - Citation:** 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(a)(1)
 - Description:** Failed to provide proper corrosion protection for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on January 20, 2012, and a record review conducted on June 13, 2012.
 - Classification:** Moderate
 - Citation:** 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
 - Description:** Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on January 20, 2012, and a record review conducted on June 13, 2012.
 - Classification:** Moderate
 - Citation:** 2D TWC Chapter 26, SubChapter A 26.3475(a)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)
 - Description:** Failed to provide release detection for the piping associated with the USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on January 20, 2012, and a record review conducted on June 13, 2012. Specifically, the annual piping tightness test was not conducted.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BLUE WATER FALL INC. DBA
SHOP-N-GO;
RN102465028**

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§
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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2014-0546-PST-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding BLUE WATER FALL INC. d/b/a Shop-N-Go ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, to request an evidentiary hearing, receive notice of an evidentiary hearing, and a right to appeal. By entering into this Order, Respondent agrees to waive all notice and procedural rights which might otherwise be authorized or required in this action.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent operated, as defined in 30 TEX. ADMIN. CODE § 334.2(70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 519 East Veterans Memorial Boulevard in Harker Heights, Bell County, Texas (Facility ID No. 45182) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. During a record review conducted on February 5, 2014, an investigator documented that Respondent failed to provide proper corrosion protection for the UST system at the Facility.
3. The Executive Director recognizes that Respondent no longer operates the Facility as of May 31, 2014.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondent failed to provide proper corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d); 30 TEX. ADMIN. CODE § 334.49(a)(1); and TCEQ Agreed Order, Docket Number 2012-1241-PST-E, Ordering Provision No. 2.a.
3. Pursuant to TEX. WATER CODE § 7.051, TCEQ has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of fifty-four thousand dollars (\$54,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Revenue Operations Section of TCEQ's Financial Administration Division reviewed the financial documentation submitted by Respondent and determined that Respondent is unable to pay all or part of the penalty. Therefore, fifty two thousand eight hundred dollars (\$52,800.00) of the penalty is deferred. Respondent paid the full one thousand two hundred dollars (\$1,200.00) of the undeferred penalty.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon Respondent.
4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the Office of the Attorney

General of the State of Texas ("OAG") to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by TCEQ under such a statute. The Executive Director may, without further notice or hearing, refer this matter to the OAG for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

7. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
10. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director



Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this Order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Sultan Prasla, President
BLUE WATER FALL INC.
4201 Monterey Oaks Boulevard, Apt. 1316
Austin, Texas 78746



Date

If mailing address has changed, please check this box and provide the new address below:
